

**REMARKS**

Claims 1-10 are pending.

As an housekeeping matter, the Examiner indicates that none of the certified copies of the priority documents have been received. However, the Notice of Acceptance of Application mailed January 31, 2006 indicates that the two priority documents filed on January 3, 2005 "have been received" from the International Bureau in this National Stage entry of PCT Application No. PCT/JP03/08508. The Examiner is respectfully requested to clarify the record in the next communication to Applicant.

In paragraph No. 2 of the Action, the abstract is objected to.

In response, a new and concise abstract has been presented. Withdrawal of the objection to the abstract is respectfully requested.

In paragraph No. 5 of the Action, claims 1-4 and 8-10 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Shimamura et al (US 6,090,505) in view of Ehrlich (US 2003/0064291).

Applicant submits that this rejection should be withdrawn because Shimamura et al and Ehrlich do not disclose or render obvious the present invention, either alone or in combination.

Present claim 1 relates to a non-aqueous electrolyte secondary battery comprising a negative electrode with a composite layer containing a negative active material, the negative active material being an alloy containing 5 to 25 mass % of nickel and 75 to 95 mass % of tin, and the alloy containing an  $\text{Sn}_4\text{Ni}_3$  phase and an Sn phase.

The Examiner contends that Shimamura et al discloses the Sn phase in the present claim 1 on the grounds that  $\text{Ni}_3\text{Sn}_2$  is disclosed in Shimamura et al.

However, the Sn phase in the present claim 1 is a phase comprising only Sn which is not an alloy, and  $\text{Ni}_3\text{Sn}_2$  is not included in the scope of the recited Sn phase.

It is disclosed at page 4, lines 4 to 7 of the specification that “crystalline phases or noncrystalline phases other than  $\text{Sn}_4\text{Ni}_3$  phase and Sn phase may be contained; for example, the phases containing Sn and Ni such as  $\text{Sn}_2\text{Ni}_3$  phase, Sn-Ni amorphous phase, ....” The “ $\text{Sn}_2\text{Ni}_3$  phase” disclosed therein is not cited as an example of the “Sn phase.” Rather, it is cited as an example of “crystalline phases or noncrystalline phases other than  $\text{Sn}_4\text{Ni}_3$  phases and Sn phase.”

Accordingly, Shimamura et al does not teach or suggest that the alloy contains the  $\text{Sn}_4\text{Ni}_3$  phase and the Sn phase.

Ehrlich is cited as teaching a negative electrode material comprising about 5 to 90 wt% nickel particles and about 10-95 wt% tin particles (abstract). Ehrlich does not make up for the deficiencies of Shimamura et al.

In view of the above, reconsideration and withdrawal of the §103(a) rejection of claims 1-4 and 8-10 based on Shimamura et al in view of Ehrlich are respectfully requested.

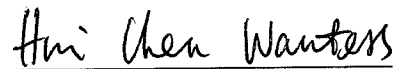
In paragraph No. 7 of the Action, claims 5-7 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Shimamura et al in view of Ehrlich, and further in view of Tsutsue et al (US 2002/0006548).

Applicant submits that this rejection should be withdrawn for essentially the same reasons that the previous rejection of claims 1-4 and 8-10 based on Shimamura et al in view of Ehrlich should be withdrawn. Tsutsue et al is cited as teaching a layer of electrode active material mixture having a porosity of 30 to 60% (abstract). Tsutsue et al does not make up for the deficiencies of Shimamura et al and Ehrlich.

Allowance is respectfully requested. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



Hui C. Wauters  
Registration No. 57,426

SUGHRUE MION, PLLC  
Telephone: (202) 293-7060  
Facsimile: (202) 293-7860

WASHINGTON DC SUGHRUE/265550

**65565**

CUSTOMER NUMBER

Date: August 22, 2008